

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LAWYER WHEELER, SR., AND WIFE,
RUBY S. WHEELER

PLAINTIFFS

V.

NO. 3:96CV18-B-A

LAWRENCE M. MAGDOVITZ

DEFENDANT

MEMORANDUM OPINION

This cause comes before the court on the defendant's motion to transfer core proceeding to United States Bankruptcy Court for the Northern District of Mississippi. The plaintiffs have not responded to the motion and the time period to respond has expired. The court has duly considered the defendant's memorandum and exhibits and is ready to rule.

The defendant asserts that this legal malpractice action¹ is a core proceeding under 28 U.S.C. § 157(b)(2) which should be adjudicated in the pending bankruptcy action, In Re: Lawyer Wheeler, Case No. 89-10985. The complaint alleges that this action arises out of the defendant's representation of plaintiff Lawyer Wheeler, the debtor in a Chapter 7 bankruptcy proceeding in the United States Bankruptcy Court for the Northern District of Mississippi. The Chapter 7 Trustee, Alex B. Gates, has, by consent of all parties, been joined as a party plaintiff in this action for

¹Plaintiff Ruby Wheeler alleges a claim for loss of consortium as a direct and proximate result of the defendant's alleged legal malpractice.

the purpose of protecting the interests of Wheeler's bankruptcy estate under bankruptcy law. The complaint invokes subject matter jurisdiction pursuant to 28 U.S.C. § 1334, the statute pertaining to jurisdiction of bankruptcy cases and proceedings. See 28 U.S.C. § 1334(b) ("district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11"). The complaint further alleges bankruptcy violations on the part of the defendant under 18 U.S.C. §§ 152, 153 and 154.

Based on the facts asserted and authority cited in the defendant's memorandum, the court finds that this cause, including the derivative loss of consortium claim, constitutes a core proceeding within the purview of 28 U.S.C. § 157(b)(2). In addition to transfer to the bankruptcy court, the defendant seeks an order authorizing the bankruptcy judge to conduct a jury trial of this cause. 28 U.S.C. § 157(e) provides:

If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

The parties have a right to a jury trial of this cause and a jury demand has been filed by the plaintiffs. Therefore, the court finds that the bankruptcy judge should be specially designated to

exercise jurisdiction over the jury trial, conditioned upon the parties' express consent.

An order granting the defendant's motion will issue accordingly.

THIS, the _____ day of June, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE